

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for the

CV 422-246

David McCloskey

Petitioner

v.

Acting Warden Flowers
United States of America

Respondent

(name of warden or authorized person having custody of petitioner)

Case No.

CR 418-260

(Supplied by Clerk of Court)

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2022 OCT 21
10:53
ERIN
SO. DIST. JUDGE
A.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: David Lawrence McCloskey
(b) Other names you have used: _____
2. Place of confinement:
(a) Name of institution: Federal Prison Camp Butner
(b) Address: P.O. Box 1000
Butner, NC 27509
(c) Your identification number: _____
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: United States District Court Southern District of Georgia Savannah Division
(b) Docket number of criminal case: CR 418-260
(c) Date of sentencing: July 23, 2019
☐ Being held on an immigration charge
☒ Other (explain): 18 U.S.C. 922(G)(3) and 924(A)(2) possession of a Firearm by a drug user.

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Decision or Action You Are Challenging

5. What are you challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)☐ Pretrial detention☐ Immigration detention☐ Detainer☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)☐ Disciplinary proceedings☒ Other (explain): The charges are unconstitutional pursuant to Supreme Court ruling New York State v. Rikle; Pistol Assn, Inc. v. Bruen 142 S. Ct. 2111, 213 L. Ed 2d 387 6/22.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States District CourtSouthern District of Georgia Savannah Division(b) Docket number, case number, or opinion number: CR 418-260(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: I did not challenge the conviction on direct review because the State of the law at the time did not offer a reasonable basis for appeal.

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☐ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

_____**12. Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

_____**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: These charges are now unconstitutional pursuant to The Supreme Court ruling in Bruen. Bruen dictates that the statute had to be considered under a historical

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(a) Supporting facts (Be brief. Do not cite cases or law.):

analysis alone, And must align with this Nations historical tradition. As a result Sec. 922(G) is unconstitutional

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes☒ No

GROUND TWO: Because a person who may use drugs is not always under the influence or high on drugs.

(a) Supporting facts (Be brief. Do not cite cases or law.):

A person who uses drugs is still protected under the 2nd Amendment plain text that also covers and individuals conduct, the Constitution presumptively protects that conduct.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes☐ No

GROUND THREE: The right to bear arms is not a second class right but a Constitutional right covered by 2nd and 14th Amendments.

(a) Supporting facts (Be brief. Do not cite cases or law.):

History is consistent with Common Sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But, that power extends only to people who are dangerous.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☐ No

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GROUND FOUR: I had not been deemed at the time
a dangerous or violent citizen.

(a) Supporting facts (Be brief. Do not cite cases or law.):

To justify its gun regulation, the govern-
ment must affirmatively prove that its
firearm regulation is part of the
historical tradition that delimits the
outerbounds of the right to keep and
bear arms.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

The state of the law at the time
did not offer a reasonable basis.
to appeal convictions

Request for Relief

15. State exactly what you want the court to do:

Vacate the unconstitutional charges and
convictions of 922(G)(3) and 924(A)(2)
Please seal all actions on this case in
respects to case # CR 418-260

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

October 17, 2022

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

10/17/2022

David McCluskey
Signature of Petitioner

Signature of Attorney or other authorized person, if any

DAVID MCCLOSKEY REG #22814-021

FPC BUTNER

P.O. BOX 1000

BUTNER, NC 27509

THE UNITED STATES DISTRICT COURT
SOUTHEASTERN DISTRICT OF GEORGIA
SAVANNAH DIVISION
C/O CLERKS OFFICE
P.O. BOX 8286
SAVANNAH, GA 31412

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U.S. Marshals Service
Savannah Georgia